

performance benchmark standard are few and far between and are not significant enough to indicate a pattern of discriminatory treatment to harm CLECs' ability to compete. The FCC does not require a 271 applicant to meet every performance standard every month in order to satisfy the requirements of Section 271. Rather, the FCC assesses the meaningfulness and competitive significance of instances of disparate performance results. In addition, where there is more than one performance measure related to a particular checklist item, the FCC reviews the totality of results for all those performance measures.

The Montana PSC will monitor Qwest's wholesale service performance on an ongoing basis in order to ensure that Qwest continues to provide adequate service to its CLEC customers and as an important part of its responsibilities under the performance assurance plan that will take effect if Qwest gains approval of its 271 application from the FCC.

Each of the 14 checklist items is discussed separately below. For more detailed information, the Montana PSC refers the FCC to the final reports this Commission issued after its review of Qwest's checklist compliance. These reports were submitted as exhibits by Qwest in its FCC filing.

A. Checklist Item 1 – Interconnection

1. Interconnection

Interconnection is defined as the physical connection of two networks through the placements of trunks or transport capacity between a Qwest switch and a CLEC switch. This connection ensures that CLEC customers can call Qwest customers and vice versa.²²

Interconnection is half of Checklist Item 1 from the 1996 Telecommunications Act, Section 271.

²² Qwest's Comments on the Facilitator's Report on Checklist Items 1, 11, 13, and 14 for the Multi-State Proceeding, page 3, May 29, 2001.

The other half is collocation and as their placement together in one checklist item indicates, these activities are often related. In the multi-state workshops, the Facilitator's *Second Report*, and the Commission's preliminary and final reports interconnection and collocation are treated separately.

Qwest must provide interconnection in accordance with the requirements in sections 251(c)(2) and 252(d)(1).²³ Section 251(c)(2) states that the carrier has:

- [t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-
- (A) for the transmission and routing of telephone exchange service and exchange access;
 - (B) at any technically feasible point within the carrier's network;
 - (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
 - (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory...²⁴

The FCC has determined that CLECs may choose any method of technically feasible interconnection at a point in the incumbent carrier's network. "Technical feasibility" means possible in the operational or technical sense and is not governed by space or site limitations or economic considerations. Interconnection can include, but is not limited to, physical collocation, virtual collocation and meet-point arrangements. The service provided CLECs must be equal in quality to that provided by the incumbent to itself and the terms, rates and conditions under which service is provided may not discriminate against a CLEC in favor of the incumbent or its subsidiary.

²³ Section 271(c)(B)(I) of the Act.

²⁴ From WS1-ATT-LSF-1, AT&T's Initial Comment, Letty S. D. Friesen, September 5, 2000, (pages 4-5).

Qwest filed testimony and exhibits in the multi-state proceeding to support its claim that it provides interconnection on a non-discriminatory basis in compliance with FCC rules. Interconnection is covered in Section 7 of the SGAT filed by Qwest. Testimony was provided by AT&T, WorldCom, McLeodUSA, Nextlink, JATO, Electric Lightwave, Contact Communications, Wyoming.com, and the Advocacy Staff of the Wyoming Public Service Commission regarding Checklist Item 1 issues.²⁵ Forty interconnection issues were resolved during the workshop and closed.²⁶ Remaining unresolved issues included: indemnification for failure to meet performance standards; entrance facilities as interconnection points; direct trunked transport cannot exceed 50 miles; and obligation to build to forecast levels.²⁷

The Commission declined to accept a Qwest proposal made after conclusion of the workshop on this issue regarding direct trunked transport. Qwest proposed a limitation of 50 miles on the direct trunked transport it is required to build. The multi-state Facilitator rejected the proposal in his recommendations because there was no basis in the record for any limitation, 50 miles or otherwise. In its comments on the *Second Report*, Qwest raised a concern over the potential uncompensated expense it could face if the Commission adopted the Antonuk resolution of the issue. Qwest argued its rates are based upon averaged costs and do not take into account possible high-cost scenarios such as direct trunked transport of greater than 50 miles in

²⁵ Participants' filings, transcripts of the workshops, and the Antonuk *Second Report*, are available on the internet web site established for this proceeding at www.libertyconsultinggroup.com/six.htm under the link "Workshop Number 1."

²⁶ See Antonuk's *Second Report* for a summary (pages 19-32).

²⁷ See pages 20-39 of the Commission's *Final Report on Qwest's Compliance with Checklist Items 1 (Excluding Collocation), 11 & 14 and Responses to Comments Received on Preliminary Report*, January 11, 2002 for the Commission's findings on these issues. A full discussion of interconnection disputed issues can be found in Antonuk's *Second Report* (pages 33-51).

length. Qwest proposed SGAT language for use in Montana whereby if direct trunked transport is greater than fifty miles in length, existing facilities are not available and parties cannot agree as to which one will provide the facility, then the parties will bring the matter to the Commission for resolution on a case by case basis. AT&T recommended the Commission reject the proposed language because Qwest could turn all requests for trunks 51 miles or longer into disputes before the Commission, potentially taking months or more to resolve. Qwest argued that a number of commissions have found its proposed language reasonable. Qwest argued that a CLEC could abuse the provision of interconnection by asking Qwest to build when it is not economical and when Qwest may not recover its costs. Qwest argued that this situation is rare – to date there have been only three instances of CLECs with transport over 50 miles.

The Commission rejected Qwest's proposal. There are provisions within the SGAT for dispute resolution; there is no need to single out this issue as somehow different from other issues. The determination was made early on in the 271 multi-state proceeding that cost issues would have to be addressed in the individual state cost proceedings. If there is an issue or flaw in the structure of the cost recovery mechanism as Qwest has argued, then Qwest has the ability to address the issue in the appropriate setting and process. CLEC operations should not be deterred nor negotiations influenced by inserting what may appear to a potential CLEC as an automatic trip to the Commission with its attendant costs.

Conclusion: Qwest satisfies the interconnection requirements of Checklist Item 1.

2. Collocation

Pursuant to 47 U.S.C. § 251(c)(6), Qwest must provide rates, terms and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local

exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the Commission that physical collocation is not practical for technical reasons or because of space limitations.

Qwest offers several arrangements of physical and virtual collocation for interconnection. Qwest demonstrated it is obligated to provide collocation by the terms of its SGAT. Parties to the multi-state proceeding raised numerous collocation issues but most were resolved in the workshop process. The Facilitator identified 15 unresolved issues and made recommendations that Qwest change its SGAT to resolve an issue and Qwest agreed to do so.

Conclusion: Qwest satisfies the collocation requirements of Checklist Item 1.²⁸

B. Checklist Item 2 – Nondiscriminatory Access to Network Elements

1. Unbundled Network Elements (UNEs)

The Act requires Qwest to provide access to Unbundled Network Elements (UNEs) “on rates, terms and conditions that are just, reasonable and nondiscriminatory” (47 U.S.C. § 251(c)(3)). UNEs include the local loop, transport, switching, various other physical and functional elements of the network (NIDs, etc.), and OSS. Qwest offers UNE platform (UNE-P) - a combination of UNEs to provide an end-to-end circuit for local service (loop, transport, and switching).²⁹ Qwest offers ancillary services with UNE-P combinations, such as directory assistance, operator services, and E911/911. Qwest converted existing retail or resold services to UNE-P combinations. Qwest provided testimony in the third multi-state workshop that its revised SGAT and its various interconnection agreements create concrete and specific legal

²⁸ See the Montana *Final Report on Qwest’s Compliance With the Collocation Requirement of Checklist Items 1 and Responses to Comments Received on Preliminary Report*, March 1, 2002.

²⁹ Direct Testimony of Lori A. Simpson, Qwest Corporation (January 19, 2001).

obligations for Qwest to provide CLECs with UNEs in conformance with Sections 251 and 271.³⁰ A summary of the testimony by parties regarding Checklist Item 2 and the issues resolved in the workshops is contained in the Antonuk *UNE Report*, pages 16-35.

Commission findings on obligations of the ILEC to construct new facilities/UNEs, commingling UNEs and tariffed services on the same facilities, the availability of testing of the OSS interface prior to CLEC entry into a market, and on the specific UNE-P issues are contained in its final report.³¹ Resolution of the issue of held orders raised by AT&T in the context of construction of new facilities/UNEs, was deferred to the Montana CLEC Forum. The CLECs participating in that forum had raised the same issue. When a CLEC order is rejected by Qwest because facilities are not available, Qwest's obligation to provide the CLEC notice if those facilities do become available for the CLEC to purchase is unclear. Blackfoot Communications ("Blackfoot") argued that Qwest should be obligated to provide notice to the CLEC if those facilities become available within 60 days of the rejected order. The Commission found Blackfoot's argument persuasive and determined that language should be added to the SGAT, but revised the 60 days to 30 days. Blackfoot also requested that performance measures and QPAP obligations accompany this obligation. The Commission views this request as best addressed in the 6-month PID review process intended in the QPAP.³²

³⁰ Direct Testimony on Checklist Item 2 of Karen A. Stewart, Qwest Corporation (Jan 19, 2001).

³¹ See *Final Report on Checklist Items 2-Access to Unbundled Network Elements and Checklist Item 4-Access to Unbundled Loops*, January 30, 2002 (pages 21-36).

³² See the *Commission Report and Findings on Montana CLEC Forum* (April 3, 2002, pages 3-5 and 10-12).

2. Network Interface Devices (NIDs)

The FCC defines the NID element as “any means of interconnection of end-user customer premises wiring to the incumbent LEC’s distribution plant, such as a cross connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent’s network interface device, or at any technically feasible point.”³³ Qwest presented testimony in the third multi-state workshop that it provides non-discriminatory access to all features, functions and capabilities of the NID.³⁴ Qwest also proposed all carriers follow the National Electric Safety Code (NESC) and the National Electric Code (NEC) to protect locations from foreign voltage.

Seven issues raised by parties in the multi-state workshop were settled in the workshop. These included access to NID features, “smart NIDs,” ownership issues, rates and access to NIDs in multiple tenant environments (MTEs), and ordering and are discussed in the Antonuk *UNE Report*, pages 70-72. Three unresolved issues remained after close of the workshop – are MTE terminals properly defined as NIDs, use of and payment for protector connections and the related safety issues under the NESC/NEC. The Commission’s findings on these remaining issues are contained in its *Final Report on Checklist Items 2 & 4* (pages 81-85).

Conclusion: Qwest satisfies Checklist Item 2.

3. Operations Support Systems (OSS)

This Commission, along with 12 other state commissions in Qwest’s region, hired KPMG Consulting and Hewlett-Packard Consulting (HPC) to conduct an independent third-party test of Qwest’s OSS in order to assess the operational readiness of those systems to support CLEC

³³ 47 C.F.R. Section 51.319(b).

³⁴ Direct Testimony of Jean M. Liston, Qwest Corporation (January 19, 2001).

competition. In addition, Liberty Consulting was hired to audit Qwest's performance measurement gathering and reporting system for compliance with the performance indicator definitions (PIDs). The ROC-OSS test was planned and conducted using a collaborative process that included the active participation of representatives of state commissions, Qwest, and CLECs. The test evaluated the four categories of Qwest's OSS functions: pre-ordering; order and provisioning; maintenance and repair; billing; and relationship management and infrastructure, across the broad range of wholesale products used by CLECs to compete with Qwest. A "military-style" testing philosophy of "test until you pass" was employed to ensure reaching the goal of having in place working Qwest systems and processes at the end of the test.

KPMG issued a comprehensive final report of the results of its and Hewlett-Packard's year-long evaluation of Qwest's OSS on May 28, 2002. For the most part, the report finds that Qwest satisfied the ROC-OSS test criteria. KPMG reported that of 579 total test criteria, Qwest satisfied 516 and failed 11. KPMG was unable to determine whether Qwest satisfied 25 criteria. The remaining 27 test criteria were diagnostic in nature, which meant the PID standards that applied to these test criteria were PIDs with no benchmarks or standards. HPC reported that of 131 evaluation criteria in its sections of the test, Qwest satisfied all but 3, and those 3 were reported by HPC as "not applicable."

After soliciting and considering comments from participants in the Montana 271 proceeding, the Commission concluded that the ROC-OSS test comprehensively evaluated Qwest's OSS and, together with Qwest's actual commercial performance results, demonstrated to the Commission's satisfaction that: (1) Qwest has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and Qwest adequately assists competing carriers to understand how to implement and use all of the OSS

functions available to them; and (2) the OSS functions that the BOC has deployed are operationally ready.³⁵

In its comments on the ROC-OSS test results, AT&T raised concerns about several aspects of the test where Qwest did not satisfy test criteria but, for most of them, Qwest was able to point to commercial performance results that show the company complies with the PID parity standards or benchmarks. The FCC has said that the most probative evidence of OSS readiness is commercial performance data. In addition, the performance assurance plan should help to prevent Qwest's wholesale performance from deteriorating and give Qwest incentives to continue to meet performance standards.

Although the Montana PSC decided that the totality of the evidence supports a conclusion that Qwest's OSS are sufficient to meet the requirements of 271, there are two OSS issues that were identified by KPMG in its report and by AT&T in its comments that cause significant concern. The first regards Qwest personnel making mistakes on CLEC orders that are manually processed. Qwest asserts that improved training and processes will remedy the situation, but, like KPMG, the Commission lacks evidence to determine whether Qwest's efforts have adequately addressed this problem. It will be important on a going-forward basis for the Montana PSC to ensure that adequate performance measures are in place to monitor Qwest's manual order handling. Qwest's proposal to use a collaborative process to develop a PID that will measure its accuracy in handling manual service orders will help to assess Qwest's success in addressing this issue.

³⁵ See the Montana PSC's *Report on Qwest's Operation Support Systems, Qwest's Change Management Process, an Unresolved Resale Billing Issue, and Issues Remaining From Previous Reports*, July 9, 2002.

A second issue that will require the Montana PSC's continued attention concerns the accuracy and reliability of Qwest's performance results. KPMG was unable to determine in some instances whether the performance data reported by Qwest for the pseudo-CLEC's transactions during the OSS test matched the results obtained by KPMG for the same transactions. In addition, KPMG reported that human error during manual order processing, such as assignment of improper application dates to orders or improper coding, was the source of problems that could cause inaccurate performance results. Liberty Consulting, which audited Qwest's compliance with the data gathering and reporting requirements of the PIDs, gave Qwest a passing grade on each PID, but it concluded its report with a recommendation for an ongoing monitoring program. The Commission's concern about the continued accuracy and reliability of Qwest's performance data should be addressed by the provisions in Qwest's performance assurance plan for auditing of the performance measurement system and for regularly scheduled plan reviews.

Commercial performance results related to OSS. The Montana PSC concluded that Qwest's commercial performance data, taken as a whole, support Qwest's claim that the company provides CLECs with access to its OSS in a manner that meets Section 271 requirements. Qwest's recent Montana performance data demonstrate that the company consistently complies with the vast majority of the OSS-related PIDs. However, results related to wholesale billing accuracy (BI-3A) indicate a persistent problem exists in the billing area. Qwest's Montana performance data for January through May 2002 show Qwest failed to meet the parity standard for BI-3A in March, April and May of 2002. In addition, Qwest missed the parity standard for the BI-4A PID, which measures the completeness of Qwest's bills for UNEs and resale, in the same three months. The Commission notes that both of these billing PIDs are

included in Qwest's performance assurance plan, which means Qwest will make payments to affected CLECs when it fails to comply with them.

Change management. Qwest has worked with CLECs to redesign its change management process since July 2001. KPMG evaluated Qwest's change management process as part of the OSS test.

KPMG reported that Qwest's CMP provides Qwest and CLECs with a process for initiating, evaluating and prioritizing desired changes to Qwest's OSS interfaces, products or processes, and allows Qwest to notify CLECs of changes that affect them. According to KPMG, Qwest and CLECs continue to negotiate elements of the CMP and have not completed documenting the redesigned CMP. In its report, KPMG found that Qwest's CMP satisfied most of the test criteria. However, KPMG was unable to determine whether Qwest satisfied several key test criteria for change management and found Qwest had not satisfied the test criterion that Qwest make available to CLECs a functional test environment for all supported OSS interfaces.

The Montana PSC concluded that Qwest's change management process meets the requirements of the Act and of the FCC. While Qwest was unable to satisfy several CMP test criteria during the OSS test, its overall results confirm that Qwest's redesigned CMP complies with the FCC's expectations. The Commission agreed with Qwest that its record of adherence to established CMP elements is likely to continue when new CMP components are implemented; however, the Commission will continue to monitor Qwest's performance in this area for ongoing compliance.³⁶

³⁶ See the Montana PSC's *Report on Qwest's Operation Support Systems, Qwest's Change Management Process, an Unresolved Resale Billing Issue, and Issues Remaining From Previous Reports*, July 9, 2002.

C. Checklist Item 3 – Poles, Ducts, Conduits, and Rights-of-Way

Section 271(c)(2)(B)(iii) of the Act requires the regional Bell operating company (BOC) to provide access to competitors to the poles, ducts, conduits, and rights-of-way owned, or controlled by the BOC. The rates charged for this access must comply with the requirement of Section 224 of the Act that the rates be just and reasonable. Qwest's obligations in the provision of access to poles, ducts, conduits, and rights-of-way are detailed in section 10.8 of the SGAT.

Checklist Item 3 was addressed in the "paper workshop."³⁷ The Facilitator's report summarizing the parties' testimony and positions in the proceeding was issued on March 19, 2001.³⁸ The Commission issued its preliminary report for comment by parties on June 13, 2001 and its Final Report on this and other checklist items on September 6, 2001. Approximately 20 issues regarding checklist item 3 were resolved in the paper workshop process.³⁹

Twelve issues remained unresolved upon closing of the process. Language proposed by the Facilitator was found acceptable to parties and the Commission for most of these issues.⁴⁰

Several issues required additional discussion (unresolved issues 3, 6 & 10). AT&T raised an issue concerning CLEC access to landowner agreements with Qwest. The dispute was over disclosure of agreements not publicly recorded and that did not contain non-disclosure language.

³⁷ The term "paper workshop" was chosen because the items addressed during the paper workshop were considered to be less controversial and were handled via paper filings without the requirement of a face-to-face proceeding.

³⁸ Parties' pre-filed testimony, transcripts, briefs and comments can be found at <http://www.libertyconsultinggroup.com/six.htm> at the link "Non-workshop Issues (Group 1).

³⁹ See the Antonuk *Report on Paper Workshop Issues* (pages 12-17).

⁴⁰ See the Commission's *Final Report on Qwest's Compliance with Checklist Items 3, 7, 8, 9, 10, & 12* and Responses to Comments Received on Preliminary Report, September 6, 2001 (pages 12-27).

The resolution proposed by Facilitator requires the CLEC to provide Qwest a legally binding agreement to indemnify Qwest. AT&T found the Facilitator's resolution unsatisfactory because it creates an expectation of nondisclosure where none existed previously. AT&T also argued the resolution was improper because the FCC already requires RBOCs to provide access to maps, plats and other relevant data to CLECs. The Commission did not find the Facilitator's resolution completely satisfactory because the potential cost of landowner suits would appear to fall entirely on CLECs. As a means of resolving the issue Qwest offered to notify landowners with which it has agreements in Montana that CLECs may have access to the agreement. The Commission accepted the offer as a reasonable approach to ameliorating the Commission's concern. Qwest provided a copy of the letter notifying landowners and has certified to the Commission that the letter was sent to those landowners.

AT&T objected to Qwest's proposal that when it receives large CLEC orders for access, it could approve or deny portions of the order within 35 days of receipt of the order and then continue processing the order on a rolling basis with no time limits until the order is completed (unresolved issue 6). AT&T cited both 47 C.F.R. 1.1403(b) and the *Cavalier* decision as requiring Qwest to respond to all requests of any size within 45 days.⁴¹ Qwest argued that the *Cavalier* decision endorsed a rolling approval process for large requests for access and AT&T's argument if followed through would end up with nonsensical results. Qwest proposed using language from the SBC Master Agreement in Texas limiting a single attachment order to no more than 300 poles or more than 20 manholes and other limits applicable to multiple unit buildings.

⁴¹ See *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*, 15 FCC Rcd. 9563.

AT&T disputed the Commission's finding that Qwest is obligated to complete all orders within 45 days but if a large order cannot be processed in the 45 day time period Qwest can seek relief from the Commission (Section 2.2 of Exhibit D to the SGAT) or use the escalation and dispute resolution procedures available in the SGAT. The Commission found this offer of possible relief, if justified appropriately by Qwest, as a pragmatic answer to a problem that has not occurred in Montana.

On unresolved issue 10 regarding correction by CLECs for problems found by Qwest in the final construction inspection, McLeodUSA questioned the definition of a "reasonable period."⁴² Qwest argued for the reasonable period to be determined on a case-by-case basis because of the different modifications that might be needed and for reasons of safety or reliability. Qwest's argument was accepted with a condition added by the Commission that whenever CLEC facilities are removed by Qwest from the right-of-way or CLEC access to right-of-way or other facilities is denied by Qwest based on a construction inspection, Qwest will notify the Commission of the occurrence within 10 days.⁴³

Conclusion: Qwest satisfies the requirements of Checklist Item 3.

D. Checklist Item 4 – Unbundled Local Loops

1. Loops

Qwest must unbundle its loops, including two-wire, four-wire and digital loops.⁴⁴ The unbundling requirements were reaffirmed in the FCC's *UNE Remand Order*, which also extended loop unbundling requirements to include fiber, attached electronics, and if requested by

⁴² SGAT Section 10.8.2.13.

⁴³ SGAT section 10.8.2.13.

⁴⁴ 47 C.F.R. 51.319.

the CLEC, the capacity for transmitting digital signals (DSL).⁴⁵ Qwest presented testimony in the multi-state proceeding on how it provisions loops, what kinds of loops are provisioned, and when and why they need conditioning. Conditioning refers to removing loop coils, bridge taps etcetera, that might interfere with the loop being used to provide xDSL service as well as voice. Loop conditioning by ILECs is mandated by the FCC when technically feasible. Where existing loops are IDLC, Qwest will try to provision universal DLC. If universal DLC is not available then Qwest has committed to go through a multi-step process to locate alternative facilities for the CLEC, including a physical copper loop.

In the workshop Qwest presented testimony on its “loop-qualifying tool” that a CLEC can use to determine if a particular loop meets ADSL qualifications prior to ordering and the “raw loop data tool” that contains essential data on the loop. The loop information is updated by wire centers monthly. Section 9.2 of the SGAT includes language regarding unbundling of loops; 4.2 contains the definitions. Service intervals for installation are affected by whether the loop needs conditioning. CLECs have available to them options on how they can order loops including whether they want performance testing and/or coordinated installation.

More than thirty issues raised by parties were resolved in the course of the third multi-state workshop.⁴⁶ Unresolved issues regarded standard intervals for loop provisioning; delays by Qwest in making available ADSL and ISDN capable loops; loop testing, spectrum compatibility especially with older T1s when conditioning charges should be refunded; availability of mechanized loop testing prior to ordering the loop; and access to certain Qwest databases for

⁴⁵ See pages 9-10, direct testimony of Jean M. Liston, Qwest.

⁴⁶ Antonuk *UNE Report*, August 20, 2001, pages 37-48..

additional loop information. Commission review and findings on the nine unresolved unbundled loop issues can be found in its final report.⁴⁷

The Commission found the discussion of the delay experienced by Rhythms on provisioning ADSL and ISDN capable loops disturbing because of the implications for smaller CLECs and the future of competition in Montana. The Commission deferred a finding on this issue until the Montana CLEC Forum where the parties had agreed to discuss actions that might be taken to improve the interaction between Qwest and small CLECs.⁴⁸ The Montana CLEC Forum provided the opportunity to several smaller CLECs be involved in 271 process and directly discuss their issues with Qwest. The Forum succeeded in resolving issues and the Commission found that the meetings should continue. The meeting will be three months after 271 approval is received by Qwest, and meetings will be held every six months thereafter, integrated with the PID reviews contemplated in the QPAP. The Commission then determined that adoption of the on-going CLEC Forums addressed its concern raised by the Rhythms experience and found the issue resolved.⁴⁹

Conclusion: Qwest satisfied the requirements of Checklist Item 4.

2. Line Splitting

Line splitting occurs when a CLEC and another CLEC or a DLEC, split up the loop; the CLEC providing the voice service and the DLEC providing the advanced data services. Qwest testified in the UNE workshop that its line-splitting offer complies with FCC requirements for

⁴⁷ *Final Report on Checklist Item 2 – Access to Unbundled Network Elements and Checklist Item 4 – Access to Unbundled Loops*, pages 45-69.

⁴⁸ *Id.*, page 53.

⁴⁹ See *Commission Report and Findings on Montana CLEC Forum*, April 3, 2002 (p. 9).

line splitting and is similar to what Bell Atlantic provides. A summary of the Commission's findings on the two issues unresolved during the multi-state third workshop can be found in its final report.⁵⁰

Conclusion: The Commission finds that the line splitting issues are resolved.

E. Checklist Item 5 – Unbundled Local Transport

Checklist Item 5 requires Qwest to provide local transport from the trunk side of a wireline switch unbundled from switching or other services.⁵¹ The FCC has identified two general categories of local transport, dedicated transport and shared transport. Qwest presented testimony in the multi-state workshop that it offers unbundled dedicated interoffice transport and shared transport in compliance with FCC requirements and offered as evidence its proposed SGAT.⁵²

A number of transport related issues were resolved in the Emerging Services Workshop (Workshop 2) including access to the facilities of Qwest affiliates and access to dark fiber in Qwest's joint-build arrangements. In the UNE Workshop three local transport issues were resolved and four local transport issues remained disputed. Enhanced Extended Links (EELs), which is a loop/transport combination, had 3 resolved issues and 5 disputed issues remaining

⁵⁰ *Final Report on Checklist Items 2-Access to Unbundled Network Elements and Checklist Item 4-Access to Unbundled Loops*, January 30, 2002 (pages 74-77).

⁵¹ 47 U.S.C. § 271 (C)(2)(B)(v).

⁵² The filings regarding this checklist item can be found on the website maintained for the state commissions under the section labeled Workshop 3 (Groups 4 and 5, except QPAP) at: <http://www.libertyconsultinggroup.com/six.htm>.

upon close of the UNE Workshop. A summary of the resolved and disputed items and parties' positions on these issues can be found in the Facilitator's Report.⁵³

The Commission's findings on the unresolved local transport issues and a summary of parties' comments on the proposed findings are found in its final report.⁵⁴ In the same final report, pages 8-12, are the Commission's findings on the unresolved EEL issues including commingling of tariffed services with UNEs where Qwest refuses to construct a UNE loop of similar bandwidth and waiver of termination liability charges for certain special access/private line circuits because Qwest was not offering EELs.

Conclusion: Qwest satisfies Checklist Item 5.

F. Checklist Item 6 – Unbundled Local Switching

In order to satisfy Checklist Item 6 Qwest must provide "local switching unbundled from transport, local loop transmission, or other services."⁵⁵ A switch is a mechanical, electrical or electronic device that opens or closes circuits, completes or breaks an electrical path, or selects paths or circuits. Local switching was identified as a UNE in the *Local Competition Order* and confirmed as such in the *UNE Remand Order*.⁵⁶ That order provides for an exception to the unbundling requirement for local switching in the case of the 50 largest metropolitan statistical areas (MSAs).⁵⁷

⁵³ See the Antonuk *UNE Report*, August 20, 2001, pages 75-89.

⁵⁴ See *Final Report on Qwest's Compliance with Checklist Items 5 & 6*, December 20, 2001, pages 3-8.

⁵⁵ Section 271(c)(2)(B)(vi) of the Act.

⁵⁶ The *UNE Remand Order* (253).

⁵⁷ No MSA in Montana is affected by this exception.

Parties' positions and the issues raised in the third multi-state regarding unbundled local switching are summarized in the Antonuk *UNE Report*, issued on August 20, 2001, pages 90-96. The testimony presented by parties and workshop transcripts for this checklist item can be found on the website under the section labeled Workshop 3.⁵⁸

Seven issues were resolved during the workshop sessions including availability of switch features, unbundling tandem switches, tandem to tandem connections and others. The Facilitator's recommended resolutions to three disputed issues were not commented on or taken exception to by parties and so were adopted by the Commission. These were:

- Access to AIN (Advanced Intelligence Network)-Provided Features
- Basis for Line Counts in Applying the Four-Line Exclusion
- Providing Switch Interfaces at the GR-303 and TR-008 Level⁵⁹

Conclusion: Qwest satisfies the requirements of Checklist Item 6.

G. Checklist Item 7 – Access to 911/E911, Directory Assistance and Operator Services

Qwest must provide nondiscriminatory access to 911 and E911, directory assistance and operator services.⁶⁰

1. Access to 911 and Enhanced 911 (E911) Services

Qwest must provide CLECs with access to basic 911 and E911 services, which include trunking, routing, the E911 database and updates to the database. The access Qwest provides to CLECs must be provided at parity to the access Qwest provides itself. Qwest is obligated to

⁵⁸(Groups 4 and 5, except QPAP) at: <http://www.libertyconsultinggroup.com/six.htm>.

⁵⁹ TR-008 is a Telcordia standard describing the interface of a SLC-96 DLC and a local digital switch. GR-303 is a digital loop carrier (DLC) system that operates on set of T-1 circuits that concentrates traffic and improves maintainability.

⁶⁰ Section 271(c)(2)(B)(vii) of the Act.

provide 911/E911 access by its SGAT and by Commission-approved interconnection agreements. Qwest provides 911/E911 access to CLECs in the same manner as Qwest itself obtains access. Information provided by Qwest during the multi-state workshop proceedings indicated that, as of August 31, 2000, Qwest provided access to 911/E911 services to two facilities-based CLECs in Montana and to ten resellers in the state.

2. Access to Directory Assistance and Operator Services

Qwest must provide CLECs with nondiscriminatory access to directory assistance services to allow CLECs' customers to obtain telephone numbers and to operator call completion services.

Qwest is obligated to provide access to directory assistance and operator services by its SGAT and its Commission-approved interconnection agreements. The elements of directory assistance provided by Qwest to CLECs include directory assistance listings, listings updates, the directory assistance database, directory assistance operators and directory assistance trunking. As of September 2000, there were 11 Montana CLECs, all resellers, with 4,072 resold lines able to access Qwest's directory assistance and operator services. Qwest submitted the results of two performance measures related to directory assistance and operator services, and explained that these measures are not measured separately for CLECs and Qwest because it is not technically feasible to disaggregate the data. The design of Qwest's directory assistance and operator service systems prevents any opportunity for discriminatory treatment of CLECs because all calls coming in, whether Qwest or CLEC, are answered on a first-in, first-out basis.

Conclusion: Qwest satisfies the requirements of Checklist Item 7.⁶¹

⁶¹ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 3, 7, 8, 9, 10 & 12 and Responses to Comments Received on Preliminary Report*, September 6, 2001.

H. Checklist Item 8 – White Pages Directory Listings

Qwest must provide white pages directory listings for customers of CLECs.⁶²

Section 251(b)(3) requires Qwest to provide CLECs with nondiscriminatory access to directory listings. The white pages listings for CLEC customers must be nondiscriminatory in appearance and integration and have the same accuracy and reliability as Qwest's listings.

Qwest demonstrated it is obligated to provide listings in compliance with this checklist item by the terms and conditions of its SGAT and by its Commission-approved interconnection and resale agreements. Various types of listings are available and Qwest integrates CLEC customer listings with its own listings and those of other companies in its listings database. As of January 31, 2001, Qwest was providing white pages directory listings for 6,138 facilities-based CLEC customers and 7,620 reseller customers. Qwest pointed to provisions in the SGAT that require all requests for white pages listings, whether CLEC or Qwest, to follow the same processes for entry into the listings database as evidence that its white pages listings for CLECs are nondiscriminatory in appearance and integration, and that CLEC listings are as accurate and reliable as Qwest listings. In addition, Qwest complies with the FCC requirement that its listings for CLECs appear in the same font and size as Qwest's listings, without any separate classification for CLECs.

In response to a listings parity issue raised by AT&T, Qwest implemented changes to the listings process so that CLEC listings updates that are submitted electronically to Qwest through the IMA-GUI interface are processed electronically. In addition, Qwest provided documentation from Liberty Consulting, the ROC-OSS performance auditor, that the performance measures

⁶² Section 271(c)(2)(B)(viii) of the Act.

related to listings database updates (DB-1C and DB-2C) were audited and that the concerns raised by the auditor in its exceptions issued as part of the ROC-OSS test were resolved.

Conclusion: Qwest satisfies the requirements of Checklist Item 8.⁶³

I. Checklist Item 9 – Number Administration

Qwest must provide nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers until the time that numbering administration rules, plan, or guidelines are established.⁶⁴ Qwest must comply with the rules, plan or guidelines when they take effect.

In January of 1999 the FCC transferred the number administration functions to an independent third party, the North American Numbering Plan Administrator (NANPA). When a new NXX code is assigned, all carriers must activate the code in their switches. Qwest has implemented processes to ensure that Qwest activates NXX codes in a nondiscriminatory and timely manner. There is a performance measure in place (NP-1A) that was developed in the ROC-OSS testing project that measures the timeliness of Qwest's activation of NXX codes prior to their effective date.

An issue raised by AT&T in the multi-state workshop proceeding regarded its concern that Qwest is slow to provision NXX prefixes to CLECs. This issue was deferred until the ROC-OSS test results were available, but the ROC-OSS test report does not address NXX prefix provisioning.

Conclusion: Qwest satisfies the requirements of Checklist Item 9.⁶⁵

⁶³ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 3, 7, 8, 9, 10 & 12 and Responses to Comments Received on Preliminary Report*, September 6, 2001.

⁶⁴ Section 271(c)(2)(B)(ix) of the Act.

⁶⁵ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 3, 7, 8, 9, 10 & 12 and Responses to Comments Received on Preliminary Report*, September 6, 2001.

J. Checklist Item 10 – Access to Call-Related Databases and Associated Signaling

Qwest must provide nondiscriminatory access to the databases and associated signaling necessary for call routing and completion. In order to comply with this checklist item, Qwest must provide or offer: (1) signaling networks, including signaling links and signaling transfer points; (2) call-related databases necessary for call routing and completion, including calling name databases, line-information databases, toll-free databases, downstream number portability databases and Advanced Intelligent Network (AIN) databases; and (3) service management systems used for call-related databases necessary for call routing and completion.⁶⁶

Qwest is obligated to provide nondiscriminatory access to databases and associated signaling by the terms of its SGAT and by Commission-approved interconnection agreements and through actual CLEC use of Qwest's databases and signaling. Qwest either actually provides or stands ready to provide access to all the required call-related databases, signaling systems and service management systems. Qwest submitted information that, as of January 31, 2001, at least one facilities-based CLEC in Montana was using the toll-free database, the line information database, the calling name delivery database and the LNP database and one CLEC has access to the Signaling System 7 network.

WorldCom claimed that Qwest's calling name assistance (ICNAM) database is an unbundled network element (UNE) that must be made available in bulk on a nondiscriminatory basis to CLECs. WorldCom claimed that the Act requires Qwest to provide CLECs with access to its entire ICNAM database because the Act includes "databases" in its definition of unbundled network elements. Qwest responded that, in the *Local Competition Order* as well as the *UNE Remand Order*, the FCC did not require incumbent LECs to provide direct access to call-related

⁶⁶ Section 271(c)(2)(B)(x) of the Act.

databases. The Commission agreed with the Facilitator's recommendation to resolve this issue in Qwest's favor because WorldCom did not provide substantial evidence to rebut Qwest's evidence on this point and WorldCom did not sufficiently support its claim to allow a conclusion that Qwest must provide the bulk transfer of the ICNAM database as a UNE.

In comments submitted in response to the Commission's preliminary findings on these checklist items, Illuminet urged the Commission not to find Qwest has satisfied the requirements of Checklist Item 10 because, according to Illuminet, the tariffed terms and conditions offered by Qwest to competitive third-party providers of Signaling System 7 (SS7) services are unreasonable and discriminatory. Illuminet claimed that Qwest implemented intrastate access tariff revisions effective June 25, 2001, which benefit Qwest to the detriment of SS7 services provided by third-party SS7 providers like Illuminet. The Commission rejected Illuminet's recommendation that Qwest be found not to be meeting the requirements of Checklist Item #10 because: 271-related cost and pricing issues were appropriately addressed in the Commission's permanent pricing docket (Docket D2000.6.89), not in the multi-state workshop process; Illuminet raised new issues in its comments in violation of the Commission's directive to limit comments to issues raised in the proceeding; and Illuminet's concerns are related to a Qwest intrastate access tariff, rather than the SGAT or an interconnection agreement which were the relevant subjects of the multi-state 271 proceeding. The Commission advised Illuminet the appropriate venue to pursue its concerns regarding the SS7 rates, terms and conditions in Qwest's intrastate switched access tariff is the Commission's complaint procedure.

Conclusion: Qwest satisfies the requirements of Checklist Item 10.⁶⁷

⁶⁷ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 3, 7, 8, 9, 10 & 12 and Responses to Comments Received on Preliminary Report*, September 6, 2001.

K. Checklist Item 11 – Number Portability

Qwest must comply with the requirements of Section 251 of the Act regarding provision of number portability to CLECs.⁶⁸ Section 251(b)(2) requires local exchange companies (LECs) to provide number portability in accordance with FCC rules "to the extent technically feasible."⁶⁹ In addition, the FCC requires that CLEC customers be able to keep their existing phone numbers "without impairment in quality, reliability, or convenience."⁷⁰ The FCC requires LECs to gradually replace interim number portability with permanent or long-term number portability (LNP). As directed by the Act, the FCC provides states with guidelines for implementing a competitively neutral cost-recovery mechanism for number portability.

Qwest provides options for implementing number portability on an interim basis, which the Act contemplated as a solution until LNP was available. Interim number portability options include remote call forwarding, direct inward dialing trunks, route indexing, and both direct - routed and tandem-routed route indexing.

All of Qwest's switches in Montana have been upgraded to provide permanent number portability using Location Routing Number (LRN) technology in conformance with FCC and industry guidelines. LRN is a number portability method that allows the "re-homing" of individual phone numbers to other switches through the use of a database and the signaling network. Each switch is assigned a 10-digit LRN that identifies the address of that switch and each phone number is matched in a regional database with the LRN for the switch serving that phone number. Neustar, a neutral third party, administers the regional number portability

⁶⁸ Section 271(c)(2)(B)(xi) of the Act.

⁶⁹ 47 U.S.C. §251(b)(2).

⁷⁰ *BellSouth Second Louisiana 271 Order*, ¶ 276.

database. When an order is received for LNP, Qwest pre-sets a trigger for the number to be ported, which allows the CLEC to control the activation of LNP on the due date or prior to the start time of an unbundled loop cutover. The trigger launches a query to the LNP database to obtain the new routing address for the number and sends the call to the switch that currently serves that telephone number for call completion. According to Qwest testimony, in the few instances when the trigger cannot be automatically set, a "managed cut" is required which requires coordination between Qwest and the CLEC to manually activate LNP at a pre-scheduled date and time.

Qwest submitted information in the multi-state workshop that 2,834 telephone numbers had been ported for CLECs in Montana as of April 30, 2000. Of that number, 2,431 were ported using interim number portability options and 403 were ported using LNP. Qwest's *Comments on the Facilitator's Report* included the updated information that, as of March 31, 2001, there had been 9,703 numbers ported in Montana.

Qwest demonstrated it meets the requirements of this checklist item by the obligations in its SGAT and Commission-approved interconnection agreements to provide number portability in a nondiscriminatory manner to CLECs.

In August 2001 Qwest implemented a mechanized delayed disconnect process to support number portability in response to CLEC concerns about the occurrence of premature disconnects during the LNP process. AT&T proposed that Qwest revise the SGAT to require Qwest to set the disconnect date for the day after the port activation is scheduled. According to AT&T, when Qwest received a CLEC request for a cutover from a Qwest loop to a CLEC-provided loop with LNP, Qwest would set the trigger for the number to be ported on the CLEC's due date, which the CLEC activates on the due date to actually port the number. Qwest's disconnection of its loop

(which occurs when Qwest's switch translations are removed) was set in advance to occur at 11:59 p.m. on the due date. If something went wrong on the CLEC side and the CLEC wanted to stop Qwest's disconnection of the loop so that the customer would not lose dial tone, the CLEC had to provide Qwest with at least four-hours' advance notice to stop the disconnect. AT&T claimed to have experienced situations where Qwest disconnected its loop and the customer lost service even when AT&T had provided the required advance notice. AT&T argued that smooth conversions are essential to competition because customers who lose service when Qwest disconnects its loop prior to the CLEC porting the number blame the CLEC, which perception adversely affects the CLEC's ability to get and keep customers. After the conclusion of the workshop, Qwest agreed to the proposal and moved the disconnect to 11:59 p.m. on the day after the scheduled port date as requested by AT&T.

The Commission found the mechanized next-day disconnect solution to be reasonable, and that Qwest's commercial performance results for OP-17, the ROC performance metric that measures premature disconnects, were satisfactory.

Conclusion: Qwest satisfies the requirements of Checklist Item 11.⁷¹

L. Checklist Item 12 – Local Dialing Parity

Qwest must provide nondiscriminatory access to services or information needed for a CLEC to implement local dialing parity in accordance with the requirements of section 251(b)(3) of the Act.⁷² Under Section 251(b)(3), LECs must provide competing carriers with nondiscriminatory access to competing providers of local phone service and toll service, as well

⁷¹ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 1 (Excluding Collocation), 11 and 14, and Responses to Comments Received on Preliminary Report*, January 11, 2002.

⁷² Section 271(c)(2)(B)(xii) of the Act, Section 252(d)(2).

as to telephone numbers, operator services, directory assistance and directory listings, with no unreasonable dialing delays. In order to comply with this checklist item, Qwest must show that CLEC customers can dial the same number of digits to make a local phone call regardless of the identity of the calling or called party's local service provider.

Qwest demonstrated its obligation to comply with this checklist item by the terms of its SGAT and its Commission-approved interconnection agreements. CLEC and Qwest customers dial the same number of digits to complete local calls or to use operator services or directory assistance and CLEC customers' calls are treated the same as Qwest customers' calls because Qwest's switches do not distinguish between such calls. Qwest implemented intraLATA toll dialing parity in Montana in February 1999 in accordance with the implementation plan approved by the Commission. There are no performance measurements associated with local dialing parity.

Conclusion: Qwest satisfies the requirements of Checklist Item 12.⁷³

M. Checklist Item 13 – Reciprocal Compensation

Qwest must provide reciprocal compensation arrangements for the transport and termination of telecommunications.⁷⁴ Reciprocal compensation involves local traffic. The Commission's Final Report on reciprocal compensation identifies five issues, two of which imposed conditions upon Qwest.⁷⁵ First, AT&T and Qwest discussions resulted in reciprocal compensation language that is attached to the Final Report and is incorporated into the SGAT.

⁷³ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 3, 7, 8, 9, 10 & 12 and Responses to Comments Received on Preliminary Report*, September 6, 2001.

⁷⁴ Section 271(c)(2)(B)(xiii) of the Act.

⁷⁵ *Final Report on Qwest's Compliance With Checklist Item # 13*, March 6, 2002.

Second, as for Qwest's host-remote transport charge, an issue emerged involving Qwest's proposal to assess tandem transmission rates for such traffic. In consideration of arguments that such umbilical facilities serve loop aggregation and trunk functions, combined with potential double collection of such costs (the loop UNE and via tandem transmission for the umbilical), the Commission denies Qwest its request to assess tandem transmission rates for traffic traversing host-remote umbilicals. Qwest may file in its new wholesale cost docket evidence to correct its rate proposals discussed here and the SGAT must be revised accordingly. Qwest agreed to comply with this Commission finding.

A third reciprocal compensation issue regards the commingling of toll and local traffic on the same trunk groups and the ratcheting down of rates from presumably FCC approved levels to TELRIC levels. The Commission's findings recognize that there are complex costing, pricing and universal service issues that can be revisited in Qwest's sequel cost docket. As an interim measure, however, the Commission disallows commingling and ratcheting; the Commission intends to obtain clarity on the FCC orders cited by the parties on this issue and to revisit the costing, pricing and policy implications in Qwest's sequel cost docket (D2002.7.87).

The fourth and fifth issues involving exchange service definitions and inclusion of collocation costs in reciprocal compensation were closed. To the extent the issue of collocation cost recovery remains, it belongs in Qwest's sequel cost docket.

Conclusion: Qwest's SGAT complies with the Commission's reciprocal compensation findings. Costing and pricing concerns that relate to these reciprocal compensation issues may be explored in Qwest's newly filed wholesale cost docket.

N. Checklist Item 14 – Resale

A BOC must make "telecommunications services ... available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."⁷⁶ Incumbent LECs like Qwest must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."⁷⁷ Section 252(d)(3) requires state commissions to determine wholesale rates based on retail rates, minus the costs the LEC will avoid for marketing, billing, collection, and other items. Section 251(c)(4)(B) prohibits "unreasonable or discriminatory limitations" on resold services, and the FCC said in its *Local Competition First Report and Order* that it presumes resale restrictions are unreasonable unless an LEC proves to the state commission that the restriction is reasonable and nondiscriminatory. Sections 271(c)(2)(B)(ii) and (xiv) require a BOC to demonstrate it provides CLEC resellers with nondiscriminatory access to its OSS.

Qwest demonstrated its obligation to offer its retail services for resale on a nondiscriminatory basis and in compliance with the Act's and FCC's resale requirements through the terms and conditions of its SGAT. Qwest has implemented resale installation and repair processes that result in Qwest providing resale services in substantially the same time and manner as Qwest provides services to its retail customers. Qwest provides CLEC resellers with training and assistance, such as assignment of an account manager to each CLEC, product information and training on the computer interfaces and business procedures that are used by resellers to interact with Qwest's OSS. As of the end of January 2001, there were 3,070 resold Qwest business lines in Montana and 6,182 resold residence lines.

⁷⁶ Section 271(c)(2)(B)(xiv) of the Act.

⁷⁷ Section 251(c)(4)(A).

Parties to the multi-state proceeding raised numerous resale-related issues, but most of them were resolved in the workshop process. The Facilitator identified 11 unresolved issues. Qwest agreed to change its SGAT in response to those issues. No Montana participant objected to the Facilitator's recommendations for resolving the disputed issues, and the Commission adopted them. The Commission took issue with the SGAT provision related to construction of facilities in regard to resold services and directed Qwest to revise this SGAT provision in a manner that maintains consistency between the SGAT and its numerous interconnections agreements.

Conclusion: Qwest satisfies the requirements of Checklist Item 14.⁷⁸ (See the discussion of the resale issues addressed in the Montana Commission's CLEC Forum).

V. EMERGING SERVICES

In two separate Commission reports four emerging service issues were addressed. In the first report, the Commission addressed subloop unbundling and line sharing. The second report regards dark fiber and packet switching. In this report these items could have been included earlier under checklist items; however to be consistent with the sequence of events in the multistate proceedings, these four emerging services are separately addressed here. The Commission emphasizes that the reverse line sharing issue is not a Checklist Item Four condition but is addressed entirely as a public interest issue.

⁷⁸ See the Montana PSC's *Final Report on Qwest's Compliance With Checklist Items 1 (Excluding Collocation), 11 and 14, and Responses to Comments Received on Preliminary Report*, January 11, 2002.